IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

WP No. 20133 of 1995

Between :

N.V.Subbaiah .. Petitioner

And

The Special Deputy Collector,
Land Acquisition (Referring) Officer,
Srisailam Right Branch Canal,
Nandyal, Kurnool District .. Respondent

Dated : 17th October, 2006

ORAL ORDER :

Writ Petition is filed with the prayer as follows :

> "For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ, order or direction directing the respondent herein to pass an order at once enhancing the compensation from Rs.17,865/- to Rs.29,000/- per acre to the petitioner's lands covered by S. No. 528/B2A (Ac.0.68 cents)

and S.No.528/A3B (Ac.0.09 cts) situated in Thudicherla village, Jupadu Banglaw Mandal, Kurnool District, on par with the decree and judgment of the learned Additional Subordinate Judge, Kurnool, dated 17.1.1995, passed in OP Nos. 199/93 to 212/93 and pass such other order or orders as are deemed fit and proper in the circumstances of the case."

The petitioner is a owner of land in Sy.Nos. 528/B2A and 528/A3B admeasuring Ac.0.68 cts and Ac.0.09 cts respectively of Thurdicherla village, Jupadu Banglaw Mandal, Kurnool District. It appears from the affidavit that the above mentioned parcels of land were submerged under the Srisailam Right Branch Canal. A notification under Section 4(1) of the Land Acquisition Act was issued on 10.6.1985 proposing to acquire the above mentioned parcel of land along with various other parcels totaling to an extent of Ac. Ac.37.81 cts. After following the due process of law an award under the Land Acquisition Act came to be passed on 9.9.1985 determining the compensation payable to the petitioner herein at Rs.17,865/- per acre. It is asserted in the affidavit filed in support of the writ petition that for an entire extent of Ac.37.81 cts referred to above, the same amount of Rs.17,865/- per acre was fixed by the Land Acquisition Officer as compensation.

Aggrieved by the said award, some of the

persons whose lands were acquired under the above mentioned notification carried the matter by way of reference under Section 14 of the Land Acquisition Act to the Civil Court in OP Nos. 199 to 212 of 1993 on the file of the Subordinate Judge, Kurnool. By a common order dated 17.1.1995, the OPs were allowed enhancing the compensation to Rs.29,000/- per acre. However, the petitioner was not one of the persons who sought such a reference under Section 18.

On coming to know of the enhancement in the amount of compensation, the petitioner, it appears made an application under Section 28-A of the Land Acquisition Act on 12.4.1995 claiming that the amount of compensation be re-determined in the light of the order of the Civil Court dated 17.1.1995 referred to earlier. Complaining that no order was passed on the application made by the petitioner under Section 28(A), the present writ petition is filed on 5th September, 1995.

A decade after the institution of the writ petition, the respondents never thought it fit to file a counter affidavit in the present writ petition.

In the circumstances, the factual allegations made by the petitioner go unrebutted.

Section 28-A reads as follows :

> "**28-A. Re-determination of the amount of compensation on the basis of the award of the court :-** (1) Where in an award under this Part, the court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all

the other land covered by the same notification under Section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the court :

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the court and the provisions of Sections 18 to

> 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18."

From the language of sub-section (1) of Section 28-A, it is clear that the respondent is under an obligation to re-determine the amount of compensation payable to the petitioner on the basis of the amount of compensation awarded by the Civil Court with respect to other parcels of land acquired under the same notification by which the petitioner's land is also acquired.

In the circumstances, the respondent is directed to pass appropriate orders in accordance with law re-determining the amount of compensation payable to the petitioner for the acquisition of the land admeasuring 77 cts in the light of the order of the Civil Court dated 17.1.1995 referred to above. The Writ Petition is accordingly allowed, but in the circumstances without costs.

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17.10.2006